

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

EDGAR DELGADO,

Defendant and Appellant.

B195676

(Considered with B200500)

(Los Angeles County

Super. Ct. No. LA049196-01)

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTONIO PADILLA,

Defendant and Appellant.

B200500

(Los Angeles County

Super. Ct. No LA049196-02)

APPEALS from judgments of the Superior Court of Los Angeles County,
Martin L. Herscovitz, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant
and Appellant Edgar Delgado.

Law Offices of James E. Blatt, James E. Blatt, Michael G. Raab and Wendy J. Marco for Defendant and Appellant Antonio Padilla.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., and Steven D. Matthews, Supervising Deputy Attorneys General, Timothy M. Weiner, Deputy Attorney General, for Plaintiff and Respondent.

Edgar Delgado and Antonio Padilla each appeal from the judgments entered after their convictions by a jury on four counts of attempted first degree murder (Pen. Code, §§ 664, 187, subd. (a))¹ with true findings on multiple firearm and gang allegations as to each count (§§ 12022.53, subds. (b), (c), (d), & (e)(1) & 186.22, subd. (b)(1)(c) & (b)(4)). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Shooting

On the evening of May 14, 2005 Daniela Quintero was walking on Vineland Avenue near Saticoy Boulevard with her three-year-old son; her son's father, Miguel Delatorre; and Miguel Andrade. As a gold or light brown-colored Lincoln Navigator drove by the group on the sidewalk, someone in the car showed himself through the window. Delatorre raised his hand, mistakenly thinking he knew the occupants. The driver of the car yelled "Cholos, cholos!"² Andrade, who had been associated with a gang called the Wanderers in the past, thought the occupants were making fun of them. The Navigator drove on and turned right into a parking lot past Saticoy, exited onto Saticoy, crossed Vineland in front of the group, made a U-turn and then drove back toward Vineland. Meanwhile, Quintero and her son, Andrade and Delatorre reached the light at Saticoy and Vineland and crossed the street. While waiting to turn left at the light

¹ Statutory references are to the Penal Code.

² Andrade testified the word "cholo" means "like a gang member."

onto Vineland, a passenger in the Navigator who wore a dark jacket and cap pointed a gun at the group through the open window behind the driver and chambered a round. Quintero and Andrade heard someone in the car shout “If you’re not [from] Vineland, you’re [not] shit.”³ The group on the sidewalk ignored the taunt, and the Navigator drove away. While Delatorre and Quintero waited next to a Kentucky Fried Chicken outlet (KFC) on Vineland, Andrade walked into an adjacent liquor store. Concerned the Navigator might return, Delatorre told Quintero to keep walking toward a fast-food restaurant farther north on Vineland while he waited for Andrade. Delatorre then saw Andrade’s brother Alfredo and a friend, Abraham Anaya, drive by in Anaya’s pickup truck and flagged the truck down. Anaya drove into the parking lot, where Delatorre told him about the men threatening to shoot them and asked Anaya to wait for Andrade to give them a ride. When Andrade came out of the liquor store, he and Delatorre climbed into the back seat of Anaya’s truck.

As Quintero walked toward a side street next to the KFC pushing her son in a stroller, she saw two men, one wearing a white T-shirt whom she recognized as the driver of the Navigator, and the other wearing a dark jacket and cap like the passenger of the Navigator had worn, move away from a clump of trees near the rear corner of the KFC and walk quickly toward the parking lot. She saw a gun in the hand of the man wearing the white T-shirt.

While Anaya waited to exit the parking lot onto Vineland, the two men from the Navigator crossed in front of the truck. When Andrade and Delatorre in the back seat indicated the men were the ones who wanted to shoot them, Anaya told them to be quiet and not say anything. The two men, both of them holding guns, looked back as they passed the truck, recognized Andrade and Delatorre in the back seat and walked up to the front passenger window of the truck where Alfredo sat. They taunted Alfredo, asking

³ Quintero and Andrade testified in Spanish at the trial, and the interpreter translated (or the reporter transcribed) this threat inconsistently, sometimes including and sometimes omitting the word “from” and the second “not.” Either way, the threat is clear in its meaning.

where he was from and if they had heard him say, “Fuck Vineland.” Alfredo rebuffed them, saying he was from “nowhere.” Both men then responded, “If you’re not [from] Vineland, you’re [not] shit”; and the one wearing the white T-shirt struck Alfredo on the bridge of the nose with the butt of his gun. As Alfredo leaned away from the window, the two men began shooting at Andrade and Delatorre in the back seat. Andrade was struck multiple times in the hand, arm and leg; Delatorre was struck in the face, chest and hand.⁴ Anaya drove the truck out of the parking lot directly to a nearby hospital. A moment later, the shooter in the dark jacket and cap, who was laughing as he stuck his gun in his pants, passed two feet from Quintero, who had turned back to meet Anaya’s truck and had watched the shooting from a short distance away.

2. The Identification of Delgado and Padilla

At the hospital Quintero described the back seat passenger as a five-feet five-inch tall male Hispanic, 130 pounds, wearing a baseball cap, dark jeans and a jacket (possibly a Raiders jacket). She described the driver as a chubby, bald, male Hispanic, five feet two inches tall, wearing a white T-shirt, blue shorts, light shoes and white socks.

Andrade described one suspect as a male Hispanic, unknown hair and eyes, five feet six inches tall, approximately 130 to 140 pounds, 19 to 20 years of age, wearing a black football jersey, black pants and a black baseball cap; the other, a male Hispanic, bald, unknown eyes, same height, build and age, but wearing a white T-shirt and black pants. The next day Anaya described the suspects as male Hispanics aged 19 to 20 years, one who was five feet six inches to five feet seven inches tall, 140 pounds, with a shaved head, light fuzzy facial hair and a light gray or white T-shirt; the other of average build, wearing a blue baseball hat, a blue or black jacket and blue jeans.

Five days later, on May 20, 2005, Anaya, Andrade, his brother Alfredo and Quintero each picked Delgado out of a photographic six-pack lineup and identified him as the driver of the Navigator who wore the white T-shirt. The investigating Los Angeles

⁴ The bullet that struck Delatorre in the face lodged in the back lower portion of his brain causing a brain injury that affected his ability to speak clearly or to testify. He was never able to identify the assailants and died before trial.

police detective, Martin Pinner, then compiled a photographic lineup of suspected associates of Delgado, including a 2004 photograph of Padilla.⁵ On May 21, 2005 Andrade stated Padilla “might” be the second shooter but told Pinner Padilla’s hair was now shorter than shown in the photograph. Pinner replaced the 2004 photograph of Padilla with an April 2005 photograph. On May 23, 2005, reviewing the revised six-pack, Quintero identified Padilla as the second suspect -- the one who had pointed the gun out of the Navigator’s window and the one who had walked by her laughing after the shooting. She based her identification in part on Padilla’s acne, which she had seen clearly as he walked by her. Anaya and Alfredo were unable to identify Padilla in the six-pack.

At a July 28, 2005 live lineup including Padilla, neither Andrade nor Quintero could identify Padilla. Andrade picked a different person, stating “It’s the one . . . the most similar or alike, and I am about 80 percent sure it was he.” Andrade also failed to identify Padilla at a March 2006 lineup but testified at trial he had been afraid that day because Delatorre, who accompanied him to the lineup, had been threatened by some gang members who had recently been released from jail.⁶

Testifying at trial, Miguel and Alfredo Andrade each identified Delgado. Miguel Andrade also identified Padilla and, reviewing the enlarged photographs in the trial exhibits, recalled seeing a small scar on Padilla’s face along the shaved hairline of the man wearing a cap during the shooting. (He admitted he had not previously told the investigating officers about the scar). Anaya identified Delgado as the man who came next to the passenger window of his truck and as the person who had threatened him with

⁵ Padilla was selected for the lineup based on a 2004 traffic stop during which he admitted his membership in the Vineland Boys gang. At the time of the stop, he was accompanied by two other gang members, one of whom was Delgado.

⁶ Although the jury was never advised of the circumstances, Delatorre was killed one week after the March 2006 lineup.

a gun in a parking lot about a month before the shooting.⁷ Although he could not identify Padilla, he corroborated Andrade's recollection the second gunman had a shaved head visible under his cap.

Quintero also readily identified Delgado at trial but could not identify Padilla, who had gained 35 pounds and grown long hair and a beard since the time of the shooting and had little, if any, visible acne. Quintero recognized Padilla from the July 2006 live lineup but explained she had been unable to identify him at that time because he had grown a beard since the shooting. Under cross-examination, however, she conceded her glimpses of Padilla on the night of the shooting were brief and hindered by darkness and her concern for her son. She also admitted that, only a week after the shooting, she had erred in identifying a photograph of Delgado as a photograph of the man who had walked by her laughing after the shooting, although she subsequently identified Padilla as that person.

Neither Delgado nor Padilla testified at trial. The defense called an expert witness to testify on the fallibility of eyewitness identification. In particular, the expert testified that, during an "intense situation," a person might focus primarily on one aspect of the event at the expense of being able to process other information. The expert further testified a friend's description of a suspect in a particular manner can influence another individual's own recollection of that suspect.

3. The Information, Verdict and Sentence

Delgado and Padilla were each charged with four counts of attempted murder (§§ 664, 187, subd. (a)). Delgado was also charged with one count of assault with a firearm (§ 245, subd. (a)(2)). As to each of the attempted murder counts the information specially alleged the elements for gun-use enhancements pursuant to section 12022.53,

⁷ In the earlier incident Anaya was changing a flat tire in a restaurant parking lot in Sunland when Delgado got out of his gold-colored Lincoln Navigator, asked where Anaya was from and showed Anaya the gun tucked in his waistband. Anaya threatened him with the tire iron he was holding, and Delgado left. Anaya was "a hundred percent" sure Delgado was one of the people shooting at him and his friends on May 14, 2005.

subdivisions (b), (c), (d) and (e)(1). As to the assault count it was also alleged Delgado had personally used a handgun within the meaning of sections 12022.5, 1192.7, subdivision (c), and 667.5, subdivision (c).

As to all counts the information further alleged the offenses were committed for the benefit of, at the direction of or in association with a criminal street gang, with the specific intent to promote, further or assist in criminal conduct by gang members, within the meaning of section 186.22, subdivision (b)(1)(C). Finally, the information alleged Delgado and Padilla had each suffered two previous felony convictions within the meaning of section 1203, subdivision (e)(4).

Delgado and Padilla were each convicted by a jury as charged in the information, and all special allegations were found true. Delgado and Padilla were each sentenced to aggregate state prison terms of 80 years to life.

CONTENTIONS

Delgado contends the evidence was insufficient to support the finding the attempted murders were willful, deliberate and premeditated. Padilla joins in this argument and also contends the evidence was insufficient to support his identification as the second shooter.

DISCUSSION

1. Standard of Review

In reviewing a challenge to the sufficiency of the evidence, we “consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.” (*People v. Mincey* (1992) 2 Cal.4th 408, 432; see *People v. Staten* (2000) 24 Cal.4th 434, 460; *People v. Hayes* (1990) 52 Cal.3d 577, 631.) Our sole function is to determine if any rational trier of fact could have found the essential elements of the crime present beyond a reasonable doubt. (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) The Supreme Court has held, “Reversal on this ground is unwarranted unless it appears ‘that

upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” (*Bolin*, at p. 331.)

“Substantial evidence” in this context means “evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578; accord, *People v. Hill* (1998) 17 Cal.4th 800, 848-849 [““[w]hen the sufficiency of the evidence is challenged on appeal, the court must review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence -- i.e., evidence that is credible and of solid value -- from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt””].) “Although the jury is required to acquit a criminal defendant if it finds the evidence susceptible of two reasonable interpretations, one of which favors guilt and the other innocence, it is the jury, not the appellate court, which must be convinced of his guilt beyond a reasonable doubt.” (*People v. Millwee* (1998) 18 Cal.4th 96, 132.)

2. *Substantial Evidence Supports the Jury’s Finding the Attempted Murders Were Willful, Deliberate and Premeditated*

“Like first degree murder, attempted first degree murder requires a finding of premeditation and deliberation.” (*People v. Villegas* (2001) 92 Cal.App.4th 1217, 1223-1224, fn. omitted.) “‘Deliberation’ refers to careful weighing of considerations in forming a course of action; ‘premeditation’ means thought over in advance. [Citations.] ‘The process of premeditation and deliberation does not require any extended period of time. “The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.”’” (*People v. Young* (2005) 34 Cal.4th 1149, 1080.)

In his lone challenge on appeal, Delgado asserts the jury lacked sufficient evidence for its finding the attempted murders were willful, deliberate and premeditated. He concedes the jury was properly instructed (see Judicial Council of Cal. Crim. Jury

Instns. (2008) No. 601),⁸ but argues there was no evidence he acted with either premeditation or deliberation.

In *People v. Anderson* (1968) 70 Cal.2d 15 (*Anderson*) the Supreme Court articulated “guidelines to aid reviewing courts in analyzing the sufficiency of the evidence to sustain findings of premeditation and deliberation.” (*People v. Perez* (1992) 2 Cal.4th 1117, 1125 (*Perez*).) The guidelines are descriptive, not normative (see *People v. Thomas* (1992) 2 Cal.4th 489, 516-517) and “are not a *sine qua non* to finding first degree premeditated murder, nor are they exclusive.” (*Perez*, at p. 1125.)

From the cases surveyed in *Anderson*, the Court identified three categories of evidence pertinent to the determination of premeditation and deliberation: “(1) facts about how and what defendant did *prior* to the actual killing which show that the defendant was engaged in activity directed toward, and explicable as intended to result in, the killing -- what may be characterized as ‘planning’ activity; (2) facts about the defendant’s *prior* relationship and/or conduct with the victim from which the jury could reasonably infer a ‘motive’ to kill the victim, which inference of motive, together with facts of type (1) or (3), would in turn support an inference that killing was the result of ‘a

⁸ CALCRIM No. 601, as given here, provides: “If you find the defendant guilty of attempted murder under Counts 1 through 4, you must then decide whether the People have proved the additional allegation that the attempted murder was done willfully, and with deliberation and premeditation. [¶] The defendant acted willfully if he intended to kill when he acted. The defendant deliberated if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill. The defendant premeditated if he decided to kill before acting. [¶] The attempted murder was done willfully and with deliberation and premeditation if either the defendant or a principal acted with that state of mind. [¶] The length of time the person spends considering whether to kill does not alone determine whether the attempted killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration of the choice and its consequences is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time. [¶] The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find this allegation has not been proved.”

pre-existing reflection’ and ‘careful thought and weighing of considerations’ rather than ‘mere unconsidered or rash impulse hastily executed’ [citation]; (3) facts about the nature of the killing from which the jury could infer that the *manner* of killing was so particular and exacting that the defendant must have intentionally killed according to a ‘preconceived design’ to take his victim’s life in a particular way for a ‘reason’ which the jury can reasonably infer from facts of type (1) or (2).” (*Anderson, supra*, 70 Cal.2d at pp. 26-27.) Regarding these categories the *Anderson* Court stated, “Analysis of the cases will show that this court sustains verdicts of first degree murder typically when there is evidence of all three types and otherwise requires at least extremely strong evidence of (1) or evidence of (2) in conjunction with either (1) or (3).” (*Id.* at p. 27.) The Court concluded the evidence against Anderson, who had stabbed the 10-year-old child of the family he lived with more than 60 times, was insufficient to demonstrate the murder was premeditated or deliberate when there were no eyewitnesses to the crime and no explanation of what led up to the murder. (See *Perez, supra*, 2 Cal.4th at p. 1126.)

Relying on *Anderson*, Delgado contends the attempted murders here of people he did not know and, with the exception of Anaya, with whom he had no previous connection had to be the product of rash, impulsive behavior incompatible with the required elements of deliberation and premeditation. Delgado’s argument ignores ample evidence falling within all three categories described in *Anderson*. To begin with, Delgado was known by local law enforcement to be a member of the Vineland Boys gang. As Los Angeles Police Officer Michael Lopez (assigned to North Hollywood’s gang enforcement unit) testified, gang members earn prestige and respect within their gang by “putting in work,” that is, engaging in violent crime like a drive-by shooting or robbery. Delgado had exhibited aggressive gang-motivated behavior just weeks earlier by flashing a gun at Anaya, a former member of the Wanderers gang, and demanding to know where he was from, evidence that supports an inference Delgado was looking for a way to prove himself to his gang by intimidating people within the neighborhood or by engaging with rival gang members. Whether Delgado knew Andrade or Delatorre personally is beside the point; Lopez testified gang members commit random acts of

violence within their territory for the purpose of protecting their gang's claim to that territory.

The evidence also shows that, on the night of the shooting, Delgado drove his Navigator along Vineland Avenue and yelled "Cholos, cholos!" at Andrade, Delatorre and Quintero after Delatorre, thinking he knew someone in the vehicle, had raised his hand to acknowledge the Navigator's occupants. Delgado drove on, circled and passed the group again, while Padilla, in the seat behind him, pointed a gun out the window. Whether or not Delgado knew about the gun at this point, he certainly heard -- or yelled himself -- the provocative exclamation "If you're not [from] Vineland, you're [not] shit," words that can reasonably be understood as a threat to the group on the sidewalk. Delgado then drove the Navigator to a side street, parked and, hiding with a gun in his hand, waited for Andrade and Delatorre to leave the KFC parking lot. When they were delayed, he and Padilla went looking for them, nearly passing Anaya's truck until they saw Andrade and Delatorre in the back seat. Approaching the passenger side of the truck where Alfredo Andrade sat, Delgado repeated his gang threat, struck Alfredo in the face with his gun and then began firing at Andrade and Delatorre in the back seat.

This evidence, both directly and inferentially, falls within the three categories -- planning, motive and manner of killing -- described by *Anderson* as the type of evidence supportive of a jury's finding of deliberation and premeditation. We see no basis whatsoever to second-guess the jury's determination on this issue.⁹

3. *Padilla's Identification Was Supported by Substantial Evidence*

Courts have long been troubled by the implications of eyewitness fallibility. For years, California courts were bound by a rule barring reliance on a testifying witness's out-of-court identification "that cannot be confirmed by an identification [of the defendant] at the trial . . . in the absence of other evidence tending to connect the defendant with the crime." (*People v. Gould* (1960) 54 Cal.2d 621, 631, overruled by

⁹ Much of the same evidence applies equally to Padilla. Hence, we also deny his appeal of this issue by joinder.

People v. Cuevas (1995) 12 Cal.4th 252, 275 (*Cuevas*) [“sufficiency of an out-of-court identification to support a conviction should be judged by the substantial evidence test”].)

In *Cuevas* the Supreme Court explained the *Gould* corroboration requirement failed to take into account “the many varied circumstances that may attend an out-of-court identification and affect its probative value. These circumstances include, for example: (1) the identifying witness’s prior familiarity with the defendant; (2) the witness’s opportunity to observe the perpetrator during the commission of the crime; (3) whether the witness has a motive to falsely implicate the defendant; and (4) the level of detail given by the witness in the out-of-court identification and any accompanying description of the crime.” (*Cuevas, supra*, 12 Cal.4th at p. 267.) Under *Cuevas*, therefore, a reviewing court should assess the circumstances of the out-of-court identification to determine whether it is sufficiently probative to support the conviction under the substantial evidence standard. (*Id.* at pp. 269, 271, 274.)

Padilla claims this court should be especially vigilant because the People’s entire case against him was based on eyewitness identification. He argues there were significant differences in the descriptions of the second person given by the three victims in the truck -- Anaya and Miguel and Alfredo Andrade -- thus establishing the unreliability of those identifications. Padilla emphasizes Alfredo and Anaya each stated he was unable to identify Padilla because the second gunman was standing behind Delgado at the time the shooting began. Although Miguel Andrade claimed to have seen a scar on the second gunman’s shaved head, Quintero stated she was unable to see any more than the lower half of the second gunman’s head due to his ball cap. Moreover, under forceful cross-examination, Quintero admitted she had not clearly seen the second gunman’s face due to darkness, distance and her preoccupation with protecting her child.

Padilla also contends the unreliability of these identifications is confirmed by the failure of Andrade and Quintero to identify him at the live lineups. Although Andrade purported to identify Padilla at trial, Quintero candidly admitted she could not identify Padilla as the second gunman.

The identification testimony was neither overwhelming nor entirely consistent. Nonetheless, we cannot say a reasonable jury could not have found those identifications persuasive.¹⁰ The initial descriptions of the second gunman given to investigating police officers by the witnesses were remarkably similar. Andrade and Quintero were then able to identify Padilla in his April 2005 photograph in which his hair appeared closely shaven, his facial hair limited to a mustache and his skin blotched with acne like the second gunman. Members of the jury could reasonably have concluded the changes in Padilla's physical appearance during the intervening 18 months -- the growth of his hair and beard and the addition of 35 pounds on a relatively small frame -- explained Quintero and Andrade's inability to identify him in other contexts. In keeping with the directive of *Cuevas* to consider the individual circumstances of an eyewitness's identification, the jury was properly instructed under CALCRIM No. 315¹¹ and presumably followed that

¹⁰ A witness's testimony may be rejected on appeal only when it is physically impossible or inherently improbable. (*People v. Mayberry* (1975) 15 Cal.3d 143, 150; *Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1065.) To be inherently improbable, "the evidence must assert that something has occurred that it does not seem possible could have occurred under the circumstances disclosed." (*Mayberry*, at p. 150; *People v. Headlee* (1941) 18 Cal.2d 266, 267.) Neither Quintero's nor Andrade's testimony comes close to satisfying this high standard.

¹¹ The jury was instructed under CALCRIM No. 315: "You have heard eyewitness testimony identifying the defendant. As with any other witness, you must decide whether an eyewitness gave truthful and accurate testimony. [¶] In evaluating identification testimony, consider the following questions: [¶] Did the witness know or have contact with the defendant before the event? [¶] How well could the witness see the perpetrator? [¶] What were the circumstances affecting the witness's ability to observe, such as lighting, weather conditions, obstructions, distance, and duration of observation? [¶] How closely was the witness paying attention? [¶] Was the witness under stress when he or she made the observation? [¶] Did the witness give a description and how does that description compare to the defendant? [¶] How much time passed between the event and the time when the witness identified the defendant? [¶] Was the witness asked to pick the perpetrator out of a group? [¶] Did the witness ever fail to identify the defendant? [¶] Did the witness ever change his or her mind about the identification? [¶] How certain was the witness when he or she made an identification? [¶] Are the witness and the defendant of different races? [¶] Were there any other circumstances affecting the witness's ability to make an accurate identification? [¶] Was the witness able to identify

instruction. (See *People v. Yeoman* (2003) 31 Cal.4th 93, 139 [jury presumed to understand and follow instructions].)

Indeed, the role of the jury in evaluating identification testimony is critical: “[T]he claimed weaknesses of identification testimony are a matter of argument to the trier of fact and cannot properly be directed to [the trial] court or effectively urged on appeal.” (*People v. Echevarria* (1992) 11 Cal.App.4th 444, 453; see also *People v. Elwood* (1988) 199 Cal.App.3d 1365, 1372 “[p]urported weaknesses in identification testimony of a single eyewitness are to be evaluated by the jury”). The jury was free, after weighing the expert testimony and hearing the extensive cross-examination, to accept or reject Padilla’s misidentification defense. (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1258-1259 “[i]t is blackletter law that any conflict or contradiction in the evidence, or any inconsistency in the testimony of witnesses must be resolved by the trier of fact who is the sole judge of the credibility of the witnesses”]; see also *People v. Lewis* (2001) 26 Cal.4th 334, 361 [““[c]onflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends””].) In sum, there is substantial evidence to support the jury’s determination Padilla was the second gunman on the night of May 14, 2005.

other participants in the crime? [¶] Was the witness able to identify the defendant in a photographic or physical lineup? [¶] The People have the burden of proving beyond a reasonable doubt that it was the defendant who committed the crime. If the People have not met this burden, you must find the defendant not guilty.”

DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.